IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8311 OF 2007

Shri.Nanasaheb Shamrao Desai .. Petitioner.

V/s.

1. Shri.Nana Rama Sutar & Anr. .. Respondents.

Mr.N.V.Bandiwadekar for petitioner.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 20th NOVEMBER, 2007.

P.C.:

1. Heard Mr.Bandiwadekar. Perused the petition and the annexures thereto including the impugned order.

2. To my mind, it is not necessary to interfere with the interlocutory order at this stage inasmuch as it would always be open for the petitioner to lead independent evidence so also step into the witness box himself and show extent of encroachment. If after all these materials are produced, the Trial Court still requires exact measurements or extent of encroachment, it would be open

for it to exercise the powers conferred upon it by Law and equally it is open for the petitioner to apply to the Trial Court to invoke the said powers. In other words, if it is necessary at that stage that the measurements be done by a Commissioner, it would always be open for the petitioner to apply to the Trial Court in that behalf and such an application if made shall be considered by the Trial Court uninfluenced by any observations in the impugned order or the rejection of the application made earlier.

3. Petition dismissed.

(S.C.Dharmadhikari, J.)